

Docket No.: 609-016

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re Application of | : | <u>BOX ISSUE FEE</u> |
| David WECK <i>et al.</i> | : | Confirmation No. 3817 |
| Serial No. 09/985,549 | : | Group Art Unit: 3632 |
| Filed: November 5, 2001 | : | Allowed: March 7, 2003 |
| | : | Examiner: K. Wood |

For: HANGER FOR AN OBJECT ADAPTED TO BE HUNG ON A WALL

RESPONSE TO EXAMINER'S REASONS FOR ALLOWANCE

Assistant Commissioner for Patents
Washington, D. C. 20231

Sir:

The undersigned attorney for applicants acknowledges the discussions between him and Examiner Wood concerning the referenced application, which discussions occurred after receipt of the Notice of Allowance and were triggered by applicants' submission of an Information Disclosure Statement to the PTO prior to receipt of the Notice of Allowance by applicants' attorney. During one of the initial telephone conferences between the undersigned attorney and Examiner Wood, Examiner Wood said that she would obtain translations of at least one of the references cited in the Information Disclosure Statement. During a second telephone conversation, attorney for applicants advised Examiner Wood that a translation made by one of the inventors, whose native language is German, indicated that there was no description in the specification of German patent 803,667 that was germane to the issues involved in the present application. Based on the translation of German patent 803,667, which

Examiner Wood kindly furnished to undersigned attorney for applicants, applicants remain of that opinion.

Attorney for applicants notes that the translation the Examiner obtained of the German reference has no discussion that is relevant to the issues of the claims of the present application. An inspection of the cross-sectional view of Figure 2 indicates the central portion of tongue 2 is farther from the back face of the base than the edges. The hatched cross-section at the center of tongue 2 is farther from the wall than the unhatched portion that appears to be at the edge of the tongue. In the opinion of applicants, the perspective view of Figure 1 verifies this interpretation. Applicants concede that the hook appears to have an arcuate ledge having a bottom edge that is lower than the bottom edge of the central ledge portion. However, none of applicants' claims include only this feature. Based on the foregoing, the German reference does not affect the allowed claims.

Examiner Wood also obtained a translation of the French patent 2 731 893, which she kindly furnished to attorney for applicant. Applicants are of the opinion that the French patent does not affect the patentability of any claims of the present application, under 35 U.S.C. §§ 102 or 103, even though the French patent discloses a hanger having a hook with a central portion that is closer to a base than edges of the hook. It is applicant's position that one of ordinary skill in the art would not have combined the disclosure in the French patent with any of the art of record to arrive at the subject matter of any of the claims of the present application. The French patent is directed to a hanger for items such as table napkins or dishtowels. The title of the French patent refers to table napkins and dishtowels; further, the second paragraph on

page 2, the first full paragraph on page 3, the paragraph bridging pages 3 and 4, the last full paragraph on page 7 emphasize that the items to be held by the hanger of the '893 patent are napkins, dishcloths, garments or rags. These items are held in place between the normally abutting surfaces of a support surface 6 and elastic gripping component 7.

During a conversation between Examiner Wood and the undersigned attorney, the Examiner said she thought Fig. 7 was quite relevant. The description of Fig. 7 indicates that it is particularly adapted for holding menus and brochures, as spelled out in the first full paragraph, last sentence, of page 10 of the translation. While the specification of the French patent indicates support surface of 6 is inwardly curved, no reasoning is given for such curvature. In the opinion of applicants, such a curvage is provided to facilitate insertion and removal of items in the nip between support surface 6 and the elastic gripping component 7. In contrast, applicant's hook is for receiving a thin elongated support structure, such as a picture wire. The surface defined in claims 1 and 8, i.e., a hook having a center portion closer to the base than edges enables applicants' elongated structure to be more easily installed on the ledge and helps to prevent fraying of the wire. Such considerations do not exist with the French patent because the articles held by the hanger of the French Patent are so different from those of applicants.

One of ordinary skill in the art would not have combined the French patent with the remaining art of record because of the different nature of the articles to be held. One of ordinary skill in the art who is interested in designing hangers for thin elongated support structures, e.g., picture hanger wires, would not be interested in art concerned

with holding napkins, and the like. There is no reason, from the French patent, to modify the art of record concerned with picture hangers to provide such picture hangers with the structures claims 1 and 8 define.

Despite arguments of the foregoing type which were advanced by attorney for applicant during the telephone interview, Examiner said she would not allow claims 1 and 8 over the French reference. Examiner Wood agreed the remaining claims were patentable. Because of the commercial importance of the present application to applicants' assignee, attorney for applicants agreed to cancel claims 1 and 8 and the claims dependent thereon, without prejudice. These claims are being cancelled to provide applicants with some type of patent protection in the immediate future. Applicants are in the process of preparing a continuation application with claims directed solely to the subject matter of claims 1 and 8 and the claims dependent thereon. In addition, the continuation application will include claims directed to the combination of the structures of claims 1 and 8 and a thin elongated support structure located on the ledge.

As a result of all the foregoing, Examiner Wood said she would prepare an Examiner's Amendment, would issue a new Notice of Allowance to replace the March 7, 2003 Notice of Allowance, and acknowledge the Information Disclosure Statement. During a telephone conference between the undersigned attorney for applicants and Examiner Brown on June 9, 2003 (in the absence of Examiner Wood from the PTO), Examiner Brown said no new Notice of Allowance had been prepared and the Examiner's Amendment had not been mailed. Examiner Brown advised applicants' attorney to pay the Issue Fee, which is being done.

The PTO is requested to acknowledge receipt of the Information Disclosure
Statement.

Respectfully submitted,

LOWE HAUPTMAN GILMAN & BERNER, LLP

A handwritten signature in black ink, appearing to read "Allan M. Lowe", is written over the firm name.

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